

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD F. ZIAS and U.S. POSTAL SERVICE,
POST OFFICE, Denver, CO

*Docket No. 00-2492; Submitted on the Record;
Issued March 7, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issues are: (1) whether appellant has more than a 7 percent permanent impairment of his right and left lower extremities, for which he received a schedule award; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office dated March 10, 2000 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

In a letter dated May 5, 2000, appellant requested reconsideration of the hearing representative's March 10, 2000 decision. The Office denied appellant's request by decision dated May 22, 2000. On June 26, 2000 appellant again requested reconsideration, which the Office denied in a decision dated July 11, 2000.

The Board finds that the Office properly exercised its discretion in refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.¹ Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated

¹ 20 C.F.R. § 10.606(b)(2) (1999).

under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.²

Appellant's May 5 and June 26, 2000 requests for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant submitted a June 21, 2000 report from Dr. Hugh H. Macaulay, III, wherein he stated that appellant had a permanent impairment. Dr. Macaulay's June 21, 2000 report is consistent with his earlier opinion dated October 29, 1999, which in fact formed the basis for the hearing representative's award for a seven percent permanent impairment of both lower extremities. As Dr. Macaulay's most recent report is cumulative in nature, it is insufficient to warrant reopening the claim.³ Consequently, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).

As appellant is not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office did not abuse its discretion in denying appellant's May 5 and June 26, 2000 requests for reconsideration.

² 20 C.F.R. § 10.608(b) (1999).

³ Evidence that is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening the claim. *James A. England*, 47 ECAB 115 (1995); *Sandra B. Williams*, 46 ECAB 546 (1995); *Sandra F. Powell*, 45 ECAB 877 (1994).

The decisions of the Office of Workers' Compensation Programs dated July 11, May 22 and March 10, 2000 are hereby affirmed.

Dated, Washington, DC
March 7, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member